

APPEAL NO. 031864  
FILED AUGUST 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 20, 2003. With respect to the issues before her, the hearing officer determined that the compensable injury of \_\_\_\_\_, does not extend to and include an L4-5 disc protrusion, grade I L5-S1 spondylolisthesis, degenerative disc disease at L5-S1, and bilateral L5 pars defects and that the respondent (self-insured) did not waive the right to contest the compensability of those conditions. The claimant appeals both of those determinations and the self-insured's response urges affirmance.

DECISION

Affirmed.

Conflicting evidence was presented on the extent-of-injury issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established. Nothing in our review of the record reveals that the hearing officer's determination that the compensable injury does not include an L4-5 disc protrusion, grade I L5-S1 spondylolisthesis, degenerative disc disease at L5-S1, and bilateral L5 pars defects is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer likewise did not err in determining that the self-insured did not waive its right to contest compensability of the L4-5 disc protrusion, grade I L5-S1 spondylolisthesis, degenerative disc disease at L5-S1, and bilateral L5 pars defects. The hearing officer noted that the question of whether the compensable injury included these conditions was a true extent-of-injury dispute and was not an attempt by the carrier to recast the nature of the injury it had accepted in order to circumvent the waiver provision of Section 409.021. We find no error in the hearing officer having so found. As a result, she properly determined that the self-insured did not waive its right to contest compensability of the conditions at issue because in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), the waiver provision of Section 409.021 does not apply to extent-of-injury disputes.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge